

**Joint Legislative Audit and Review Committee (JLARC) 1.A.**

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**SENATORS**

Randi Becker  
 John Braun, *Vice Chair*  
 Annette Cleveland  
 David Frockt  
 Janéa Holmquist Newbry  
 Jeanne Kohl-Welles, *Secretary*  
 Mark Mullet  
 Ann Rivers

**REPRESENTATIVES**

Cathy Dahlquist, *Assistant Secretary*  
 Tami Green  
 Kathy Haigh, *Chair*  
 Ed Orcutt  
 Gerry Pollet  
 Derek Stanford  
 J.T. Wilcox  
 Hans Zeiger

January 7, 2014

**JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE  
 REGULAR COMMITTEE MEETING MINUTES**

**COMMITTEE BUSINESS**

- Representative Kathy Haigh, JLARC Chair, called the meeting to order at 10:00 a.m.
- *Representative Orcutt made a motion to approve the minutes from the December 11, 2013, JLARC meeting. Motion was seconded and carried unanimously.*

**REPORTS, PRESENTATIONS, DISCUSSIONS**

**Legislative Auditor Report to the Legislature: Guidance for Drafting Performance Statements in Tax Preference Legislation**

Legislative Auditor Keenan Konopaski presented this report to the Committee. In 2013, the Legislature established new requirements to improve the clarity of tax preference policy purposes and performance expectations (ESSB 5882). The Legislature also directed the Legislative Auditor to prepare this report, with the goal of recommending appropriate data and metrics to improve evaluations of new tax preferences. The report contains three parts: 1) a conceptual framework to help develop the purpose, data, and metrics for tax preferences, using the concept of a “logic chain;” 2) a bill drafting guide to help put the concepts and expectations developed from a logic chain into statutory language for a tax preference performance statement; and 3) eight additional observations for legislators to consider when establishing a new tax preference.

Representative Dahlquist expressed her views about the role of JLARC and how that role has evolved since the creation of the Citizen Commission for Performance Measurement of Tax Preferences. She said JLARC is a bipartisan committee that takes information in and then as legislators decide what to do with that information, for example, to write a bill to continue or eliminate a tax preference. She finds it troubling that JLARC staff are directed to make recommendations to review and clarify, terminate, or continue a tax preference. She commented that having this drafting guidance as a tool should help legislators.

**Competency to Stand Trial, Phase II: DSHS Has Not Met Performance Targets – Better Management and Analysis Could Help It Do So—Preliminary Report**

Eric Thomas, Elisabeth Donner, Sarah Unbehaun, and Zane Potter from the JLARC staff presented the preliminary report for this study. The 2012 Legislature passed a bill (SSB 6492) to “sustainably improve the timeliness of services related to competency to stand trial” and established performance targets for competency evaluations and referrals to state hospitals. The Department of Social and Health Services (DSHS) is not consistently meeting the statutory performance targets and has not implemented its plan to address new requirements. The agency has also struggled to provide accurate and timely performance information, and it has not completed the basic planning and analysis necessary to identify the best approach to meet the targets. This report identifies the kinds of analysis the agency can undertake to help identify the best path forward. Three Legislative Auditor recommendations are intended to help DSHS meet statutory requirements and manage its resources. Two recommendations are intended to improve coordination and communication among the judicial system partners involved in competency services.

Representative Haigh commented that she had recently visited Kitsap Mental Health, and that the Kitsap group has put together services that address both physical health and mental health, plus they also work with the criminal justice system.

Senator Becker asked if staff had looked at the organizational chart for the administrative functions to see who has what responsibilities and how they are working with the staff. Staff reported hearing anecdotal reasons of why people were leaving and noted that Labor & Industries had completed a report on working conditions at Western State Hospital that included a look at evaluator working conditions. Staff added that the analysis in the JLARC report shows that the turnover rate in the in-patient unit accounted for 75 percent of the total turnover in the last four and a half years.

Senator Frockt asked for additional information about evaluation practices in Wisconsin and Georgia. Staff answered that staff in Georgia reported centralizing some of the in-take functions to provide more consistent services, and that staff in Wisconsin reported having evaluators in different parts of the state in order to have them in closer proximity to where the evaluations are being requested.

Representative Haigh invited a representative from DSHS (Jane Beyer, Assistant Secretary for Behavioral Health and Service Integration at DSHS) to come before the Committee. The DSHS representative said that she appreciated the work of the JLARC staff and that the report had some good recommendations, some of which are already being worked on. She indicated DSHS is seeing improving trends especially at Western State Hospital in terms of the time people are waiting for admission or to receive evaluations. She noted that the report talks about the role of the courts and the number of people who had repeatedly been put into the criminal justice system. She stated that all parties own the forensic mental health system, including the Legislature, the courts, the defenders, the prosecutors, law enforcement, the community mental health system, the state hospitals, and DSHS.

The DSHS representative noted there will be many discussions this legislative session about the state’s response to a federal letter on how to purchase community-based mental health services, with forensic mental health services a part of that discussion. She reported that DSHS has contracted with a forensic consultant as part of a bill that passed last session, with recommendations from that effort coming in August. She indicated that the time period covered in the report is before there were two new CEOs at the state hospitals. She stated that DSHS will carefully review the report’s recommendations and will be fully transparent about the resources that would be needed to accomplish them.

Representative Green noted the major change in where the evaluations take place, shifting from the hospitals to the community settings. She asked if DSHS had any preliminary thoughts on having the evaluators spread out more geographically and not having that responsibility rest with the state hospitals. DSHS staff responded that they are looking at the data, especially for Eastern Washington, to see whether they might be able to out-station other evaluators similar to the way they out-station the one group in Seattle. She said they are also checking the volume of referrals in Southwest Washington. She added that if DSHS does locate more evaluators in the community, the agency would have to consider factors such as office space for them.

Representative Dahlquist asked why the agency is not meeting so many of the requirements of the 2012 legislation. DSHS staff responded that the 2012 legislation sets the most aggressive timelines in the nation for competency evaluations. She said that the bill was passed at a time when there were significant budget constraints, and that the agency's ability to ask for and for the Legislature to grant additional funding for additional evaluators was limited. She reported that the Legislature did provide the state hospitals with additional funding last session and the Governor requests more this session, but that the funding is for basics like staff and patient safety.

Representative Haigh commented that they are all concerned about the revolving door and the need to work with the justice system and with mental health, drug abuse, and physical health.

#### **Assessing the Impact of Tuition on Access, Affordability, and Institutional Quality—Project Update**

Eric Whitaker from the JLARC staff presented the project update for this study. In 2011, the Legislature passed a bill granting temporary tuition-setting authority to the State's four-year higher education institutions and directed JLARC to conduct an audit of the impact of tuition-setting authority on student access, affordability, and institutional quality (E2SHB 1795). JLARC staff found considerable overlap on measures for access and affordability and will use these measures in the study. There is no consensus in the literature on how to measure "institutional quality," and the Legislature has not defined the term. This report identifies three indicators that, at a minimum, JLARC staff will use to assess institutional quality. It is also an option that the Legislature could explicitly define institutional quality in statute.

Senator Kohl-Welles noted work underway by the Western Interstate Commission on Higher Education on a multi-state data exchange project. She indicated that work on post-graduation income and employment status could be related to quality. She also noted a lot of attention at the national level on degree completion as an important element. Staff responded that they had attended the Commission meeting last Spring in Spokane and talked with the Commission staff.

Representative Haigh asked if any of the representatives from the institutions or the Council of Presidents wished to comment. They did not.

#### **K-12 Employee Health Benefits: Legislature Should Direct Insurance Commissioner to Collect Data Needed to Analyze Health Care Purchasing—Project Update**

John Bowden from the JLARC staff presented the project update for this study. In 2012, to improve the equity and affordability of health care for school district employees, the Legislature established a number of goals for the provision of K-12 health care benefits and assigned specific roles to the Office of the Insurance Commissioner (OIC), the Health Care Authority (HCA), and JLARC to assess district progress

(ESSB 5940). This project update notes that OIC is not collecting all the data needed for the assessment and recommends the Legislature clearly direct OIC to collect and share that data.

Representative Haigh asked how much impact the federal Affordable Care Act is likely to have on K-12 employee insurance purchasing, especially for school employees who have children and who make less than \$15,000 per year. Staff answered that, not specific to this audit, the Legislature has expressed interest in knowing more about differences between part-time and full-time employees.

Representative Haigh invited the representative from the Office of the Insurance Commissioner (Jason Siems, Deputy Commissioner for Policy and Legislative Affairs) to come before the Committee. OIC staff stated that the Office has done an effective job in complying with the language in the statute. He acknowledged that JLARC staff have expressed concerns that the data should have been collected on a district-wide basis. He said that statute requires OIC to collect data by “health benefits package,” a term that was not defined. He said that OIC then looked at other statutes for a definition and found where “health benefits package” was defined as a health plan, leading OIC to collect the data on a health plan basis. OIC staff stated that, if the Legislature changed that, the agency would make its best attempt to comply with the revised law.

Representative Dahlquist asked for clarification on the definition OIC used on the health benefits package. OIC staff answered that the bill used the term “benefits package” but did not expressly define that term. OIC staff said they then tried to determine what that term meant and found a definition in statute saying a “benefits package” is a health plan.

Representative Haigh invited representatives from the Health Care Authority (Kari Leitch, Administrator for the Office of Health Care Innovation and Reform, and Lynn Dong, HCA consulting actuary at Milliman) to come before the Committee. Ms. Leitch confirmed that HCA does not have access to all the data OIC has collected, and she indicated the agency has concerns related to their ability to complete their assignment in the legislation without the complete data. HCA staff indicated that HCA agrees with the recommendations in the JLARC report to have access to the data and to protect that data from public disclosure. She added that the report timelines would most likely need to be adjusted in order to meet the intent of the Legislature to have two years of data for the analysis.

Senator Becker asked for clarification about what “data” means in the context of this discussion. She asked if it means individually identifiable records for patients or redacted information on claims history or payment information, etc. HCA’s consulting actuary answered that the problem is with the way that the data OIC is collecting is being summarized, which does not allow HCA to see a full story. She indicated that HCA is not looking for individually identifiable data on things like claims history, health status, or diagnosis information. However, they do need a database that would show at a summarized district level some employee information on factors such as age, gender, benefit status, covered and eligible dependents, and the benefit plan currently selected, as well as the total premium for that benefit plan, broken down by employer and employee contribution. She reported that they have been clear that they would need access to this kind of more detailed information and that its absence hampers any meaningful analysis.

Senator Becker commented that people from school districts in her legislative district have told her that their costs have gone up and asked if OIC is capturing information on whether a person’s out-of-pocket

expenses or copays have been increasing. HCA's consulting actuary indicated that, with the way the information is currently summarized, HCA would be able to see the aggregate employee contribution for her district but that the information is skewed by whether employees are choosing a plan for an individual or for a family. She said this is another reason they need the information to be disaggregated.

Senator Frockt asked if either agency is providing draft legislation to address the data questions and achieve the intent of the legislation. HCA's consulting actuary answered that this is under discussion. Senator Frockt sought to clarify whether there is a problem with the way the data is reported due to confidentiality and whether legislators need to make a change or not. HCA staff responded that one issue is the concern about the way the data has been collected and that a second issue is that HCA does not have access to the data that has been collected and that, absent that information, HCA will not be able to complete the analysis called for in the legislation.

Senator Braun asked if the correct data exists but HCA does not have access to it or that not enough data exists and HCA also does not have access to it, or if it is both. HCA staff confirmed that it is both issues.

### **Total Highway Maintenance and Preservation Estimates Are Available—Phase 1 Briefing Report**

Mark Fleming and Tracey Elmore from the JLARC staff presented the briefing report for this study. The 2013-15 Transportation Budget (ESSB 5024) directed JLARC to review Washington State Department of Transportation (WSDOT) highway maintenance and preservation needs, in two phases. This Phase 1 report concludes that WSDOT has developed procedures for estimating total needs for highway maintenance and preservation. These estimates, however, are not required to be submitted as part of the biennial budget process. Unlike the budget procedures, which are well-documented, documentation of procedures for developing total needs estimates is less complete. Phase 2 of the study will evaluate whether WSDOT methods and systems for estimating highway maintenance and preservation needs are consistent with industry practices and other appropriate standards.

Representative Haigh invited a representative from the Department of Transportation (Jay Alexander, Director of Capital Program Development and Management) to come before the Committee. He said he appreciates the suggestions for improved documentation. He reported that asset management is an important topic nationally in the transportation field, something that many transportation agencies are interested in. He indicated the agency's optimism that Phase 2 of the report will show WSDOT as a leader in managing their assets and said he looks forward to future discussions on how they can improve their ability to plan and put forward recommendations to the Legislature on how to take care of highway system assets.

With no further business before the Committee, the Chair adjourned the meeting.

### **ATTENDANCE**

JLARC Members Present: Senators Randi Becker, John Braun, David Frockt, Jeanne Kohl-Welles, and Ann Rivers; Representatives Cathy Dahlquist, Tami Green, Kathy Haigh, Ed Orcutt, Derek Stanford, and Hans Zeiger.

JLARC Staff Present: Keenan Konopaski, Legislative Auditor; John Woolley, Deputy Legislative Auditor; Valerie Whitener, Audit Coordinator; John Bowden, Linda Byers, Elisabeth Donner, Mark Fleming, Peter

Heineccius, Steven Meyeroff, Zane Potter, Eric Thomas, Eric Whitaker, Marilyn Richter, Suzanne Kelly, Matt Stoutenburg, and Sarah Unbehaun.

ADJOURNMENT

The meeting was adjourned at 11:50 am.

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CHAIR

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DATE

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VICE CHAIR

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DATE